

c. Discussion

42. We now affirm our tentative conclusion in the Notice and find that our current tariff form requirements are burdensome for nondominant carriers and unnecessary to perform our responsibilities under the Communications Act. On the basis of the record, we find that modification of existing tariff form requirements would yield numerous benefits to the public. As many commenters contend, in conjunction with the significantly streamlined tariff notice and tariff content requirements adopted today, requiring nondominant carriers to file tariffs and revisions on computer diskette and granting greater flexibility in the format of such filings, will substantially serve the public interest by facilitating competition in the telecommunications marketplace. Such modifications should significantly reduce the administrative burdens upon both the Commission and carriers, which will promote innovation, speed up introduction of service offerings, ensure a predictable regulatory environment and generally bring consumers diverse service offerings at lower costs. We further find that we have the legal authority under the Communications Act to establish such new rules for nondominant carriers.

43. Consequently, we now adopt modified tariff form requirements for nondominant carriers as proposed in the Notice.¹¹² Specifically, we require nondominant common carriers to file their tariffs and revisions on a three and one-half inch floppy diskette that contains their complete tariff.¹¹³ We also require that nondominant carrier tariff filings submitted on floppy diskettes be formatted using MS DOS 5.0 and Word Perfect 5.1 software.¹¹⁴ We further require that, in order to facilitate the processing, storage and availability of tariffs, nondominant carriers should refile their entire tariff on a new diskette after integrating any modifications to an existing tariff.¹¹⁵ In addition, carriers must

¹¹² The rules we adopt are stated in Appendix B.

¹¹³ While we recognize that paper tariff filings may be less costly for certain carriers, we find that, on balance, the reduced administrative burdens for the Commission and the benefits to the public outweigh the costs imposed by requiring tariff filings on computer floppy diskettes.

¹¹⁴ We will, however, allow nondominant carriers that demonstrate either substantial administrative and/or financial hardship to petition the Commission for a waiver of our format rules that require tariffs submitted on floppy diskettes to be filed in Word Perfect 5.1 text format. See 47 C.F.R. §1.3.

¹¹⁵ We decline to alter our existing fee structure for carrier tariff filings, which is set forth in the Communications Act. 47 U.S.C. §158.

indicate in their tariffs, in whatever way they prefer, that new or changed material is present. Finally, a separate cover letter must accompany any nondominant carrier filing that identifies the carrier, and provides basic information regarding the tariff. We adopt these tariff form requirements in order to ease the overall administrative burdens and financial costs imposed on nondominant carriers as a result of the new tariff filing requirements we adopt today.

44. Finally, we find that we have sufficient legal authority under sections 203 and 4(i) of the Act to modify our tariff form requirements. As indicated above, section 203 grants us broad discretion to define the type and content of information that carriers must file.¹¹⁶ In addition, section 4(i) of the Act authorizes the Commission to "make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions."¹¹⁷ Significantly streamlining our existing tariff form requirements, in conjunction with the other tariff filing modifications we adopt today, will contribute to the continued competitiveness of the interstate telecommunications marketplace. Thus, we conclude that our modification of existing tariff form requirements fully satisfies the terms of sections 203 and 4(i) and represents the lawful exercise of our statutory discretion.

C. Conclusion

45. On the basis of the record in this proceeding, we now conclude that significantly streamlined tariffing requirements for nondominant common carriers as adopted today will substantially serve the public interest by affording nondominant carriers increased flexibility to meet their tariff filing obligations. As such, these rules changes will promote price competition, foster service innovation, encourage new entry into various segments of telecommunications markets and enable firms to respond quickly to market trends.

IV. Regulatory Flexibility Act Analysis

1. Final Regulatory Flexibility Analysis

46. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. §§ 601-612, the Commission's final analysis with respect to the Report and Order is as follows:

¹¹⁶ See supra paras. 34-36.

¹¹⁷ 47 U.S.C. §154(i).

47. Need and purpose of this action: The adoption of the Report and Order will promote the public interest by affording nondominant carriers significant flexibility in meeting their tariff filing obligations. As such, these rule changes will promote price competition, foster service innovation, encourage new entry into various segments of telecommunications markets and enable firms to respond quickly to market trends.

48. Summary of issues raised by the public comments in response to the Notice of Proposed Rulemaking: The Chief Counsel for Advocacy of the United States Small Business Administration (SBA), filed comments in response to the Notice of Proposed Rulemaking. The SBA stated that current streamlined tariff filing requirements could disadvantage small interexchange carriers because these carriers can not readily pass tariff filing costs on to consumers. SBA also stated support for the proposal to permit nondominant carriers to file either maximum rates for particular services or a range of rates for each service.

49. Significant alternatives considered and rejected: The Commission rejected the SBA suggestion to establish tiers of nondominant interexchange carriers with differing tariff requirements based on the size of the interexchange carrier. The Commission found that the original scope of this proceeding did not include, and was not expanded to include, the modification of existing regulatory classifications.

V. Ordering Clauses

50. Accordingly, IT IS ORDERED that, pursuant to Sections 1,4(i), 4(j), 201-205 and 403 of the Communications Act, as amended: 47 U.S.C. §§ 154(i), 154(j), 201-205, and 403, the MEMORANDUM OPINION AND ORDER IS ADOPTED amending Section 43.54, 61.20, 61.21, 61.22, 61.23 of the Commission's rules, 47 C.F.R. § 43.54, 61.20, 61.21, 61.22 and 61.23 as indicated above and in Appendix B and is effective upon publication of a summary in the Federal Register.¹¹⁸

51. IT IS FURTHER ORDERED that, the Secretary shall send a copy of this MEMORANDUM OPINION AND ORDER, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy

¹¹⁸ The publication of a rule may be made less than 30 days from publication in the Federal Register where good cause exists. See 5 U.S.C. § 553 (d) (3). In order to end as expeditiously as possible the regulatory and marketplace uncertainty resulting from the U.S. Court of Appeals' decision overturning our permissive detariffing rules, we adopt new requirements contained herein and find good cause to make this order effective upon publication in the Federal Register.

of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-453, 94 Stat. 1164, 5 U.S.C. §§ 601 et seq. (1981).

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
William F. Caton
Acting Secretary

APPENDIX A

Aeronautical Radio (ARINC)
AD Hoc Telecommunications Users Committee (AdHoc)
Allnet Communications Services, Inc. (Allnet)
Association for Local Telecommunications Services (ALTS)
American Telephone and Telegraph (AT&T)
American Public Communications Council (APCC)
Ameritech
Avis Rent-A-Car System (AVIS)
Bell Atlantic
BellSouth Telecommunications Inc. (BellSouth)
Capital Cities/ABC and National Broadcasting Company (ABC/NBC)
Cellular Telecommunications Industry Association (CTIA)
Century Cellunet, Inc. (Century)
Citicorp
Competitive Telecommunications Association (CompTel)
Electric Lightwave Inc. (ELI)
GE American Communications, Inc.
General Communications, Inc. (GCI)
General Services Administration (GSA)
GTE Service Corporation (GTE)
Information Technology Association of America (ITAA)
International Communications Association (ICA)
Kenneth Robinson, Attorney (Robinson)
LinkUSA Corporation (LinkUSA)
Local Area Telecommunications (LOCATE)
McCaw Cellular Communications (McCaw)
MCI Telecommunications (MCI)
MFS Communications Company (MFS)
Mobile Marine Radio (MMR)
National Telephone Cooperative Association (NTCA)
NYNEX Telephone Companies (NYNEX)
Pacific Bell and Nevada Bell (PacBell)
PacTel Corporation (PacTel)
PacTel Paging, et. al. (PacTel Paging)
Pilgrim Telephone, Inc. (Pilgrim)
Penn Access Corporation (Penn Access)
RCI Long Distance and Rochester Telephone Mobile Communications (RCI)
RGT Utilities (RGT)
Small Business Administration (SBA)
Southwestern Bell Corporation (SWB)
SPRINT Communications Company (SPRINT)
Telecommunications Association (TCA)
Telecommunications Resellers Association (TRA)
Telecom Services Group, Inc. (TSG)
Telelocator, the Personal Communications Industry Association (Telelocator)
Teleport Communications Group (Teleport)
Two-Way Radio Communications Co. of Kansas, Inc. (Two-Way)
United States Telephone Association (USTA)

APPENDIX B

FINAL RULE CHANGES

PART 43

REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

Sec.

43.51 Contracts and concessions.

PART 61 TARIFFS

Sec.

61.1 Purpose and application.

61.2 Clear and explicit explanatory statements

DEFINITIONS

61.3 Definitions

61.11-61.19 [Reserved]

GENERAL RULES FOR DOMESTIC NONDOMINANT CARRIERS

61.20 Method of Filing Publications

61.21 Cover Letters

SPECIFIC RULES FOR DOMESTIC NONDOMINANT CARRIERS

61.22 Composition of Tariffs

61.23 Notice Requirements

61.24-61.26 [Reserved]

Reports of Communications Common Carriers and Certain Affiliates

1. Section 43.51 is amended by revising paragraph (a) to read as follows:

§ 43.51 Contracts and concessions

(a) Any communications common carrier engaged in domestic or foreign communications, or both, which has not been classified as non-dominant pursuant to §61.3 of the Commission's Rules, 47 CFR 61.3, and which enters into a contract with another carrier, including an operating agreement with a communications entity in a foreign point for the provision of a common carrier service between the United States and that point, must file with the Commission, within thirty (30) days of execution, a copy of each contract, agreement, concession, license, authorization, operating agreement or other arrangement to which it is a party and amendments thereto with respect to the following:

(1) * * *
* * * * *

General Rules for Domestic Nondominant Carriers

§ 61.20 Method of Filing Publications

(a) Publications sent for filing must be addressed to "Secretary, Federal Communications Commission, Washington, D.C. 20554." The date on which the publication is received by the Secretary of the Commission (or the Mail Room where submitted by mail) is considered the official filing date.

(b) In addition, for all tariff publications requiring fees as set forth in Part 1, subpart G of this chapter, issuing carriers must submit the original of the cover letter (without attachments, FCC Form 155, and the appropriate fee to the Mellon Bank, Pittsburgh, PA at the address set forth in § 1.1105. Issuing carriers should submit these fee materials on the same date as the submission in paragraph (a).

(c) In addition to the requirements set forth in paragraphs (a) and (b) of this section, the issuing carrier must send a copy of the cover letter with one diskette containing both the complete tariff and any attachments, as appropriate, to the Secretary, Federal Communications Commission. In addition, the issuing carrier must send one diskette of the complete tariff and a copy of the cover letter to the commercial contractor (at its office on Commission premises), and to the Chief, Tariff Review Branch. The latter should be clearly labeled as the "Public Reference Copy." The issuing carrier should file the copies required by this paragraph so they will be received on the same date as the filings in paragraph (a).

§ 61.21 Cover Letters

(a) Except as specified in § 61.32(b), all publications filed with the Commission must be accompanied by a cover letter, 8 1/2 by 11 inches (21.6 cm x 27.9 cm) in size. All cover letters should briefly explain the nature of the filing and indicate the date and method of filing of the original of the cover letter as required by § 61.20(b).

(b) A separate cover letter may accompany each publication, or an issuing carrier may file as many publications as desired with one cover letter. Note: If a receipt for accompanying publication is desired, the cover letter must be sent in duplicate. One copy showing the date of receipt by the Commission will then be returned to the sender.

Specific Rules for Domestic Nondominant Carriers

§ 61.22 Composition of Tariffs

(a) The tariff must be submitted on a 3 1/2 inch (8.89 cm) diskette, formatted in an IBM compatible form using MS DOS 5.0 and Word Perfect 5.1 software. The diskette must be submitted in "read only" mode. The diskette must be clearly labelled with the carrier's name, Tariff Number, and the date of submission. The cover letter must be submitted on 8 1/2 by 11 inch (21.6 cm x 27.9 cm) paper, and must be plainly printed in black ink.

(b) The tariff must contain the carrier's name, and the information required by Section 203(c) of the Act. Rates may be expressed in a manner of the carrier's choosing and may include a reasonable range of ranges.

(c) Changes to a tariff must be made by refileing the entire tariff on a new diskette, with the changed material included. The carrier must indicate in the tariff what changes have been made.

(d) Domestic nondominant carriers subject to the provision of this section are not subject to the tariff filing requirements of Section 61.54 of these rules.

§ 61.23 Notice Requirements

(a) Every proposed tariff filing must bear an effective date and, except as otherwise provided by regulation, special permission, or Commission order, must be made on at least the number of days notice specified in this section.

(b) Notice is accomplished by filing the proposed tariff changes with the Commission. Any period of notice specified in this section begins on and includes the date the tariff is received by the Commission, but does not include the effective date. In computing the notice period required, all days including Sundays and holidays must be counted.

(c) Tariff filing of domestic nondominant carriers must be made on at least one day notice.